



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/170777

PRELIMINARY RECITALS

Pursuant to a petition filed December 15, 2015, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Milwaukee Enrollment Services to reduce FoodShare benefits (FS), a hearing was held on January 20, 2016, by telephone.

The issue for determination is whether the agency correctly budgeted petitioner's husband's income for FS purposes.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner resides with her husband, who is ineligible for FS because of his citizenship status. Petitioner's husband is self-employed. In November, 2015 petitioner received the maximum FS of \$194 for a one-person household.
3. Petitioner needed to complete an FS review before December 1, 2015; she completed it on November 30, 2015. The agency requested and received petitioner's husband's 2014 self-

employment tax return. His net income plus depreciation add-back was \$32,474, which averaged out to \$2,706.16 per month. The county then deemed his income to petitioner as required by FS rules, and as a result petitioner's deemed monthly income was \$1,082.46 per month. When that amount as entered, petitioner's FS were reduced to \$22.

4. By a notice dated December 4, 2015, the agency informed petitioner that she would receive \$22 monthly FS beginning December 1, 2015.

DISCUSSION

There are two issues involved in petitioner's case that caused the reduction in FS. The first is how self-employment income is handled. Treatment of self-employment income is described at 7 C.F.R. §273.11(a). Such income is annualized over a 12-month period, unless the income is intended to meet the household's needs over a shorter period. §273.11(a)(1)(i) and (iii). To determine monthly income, the agency must take yearly income, add back in depreciation, net loss carryovers, and personal expenses, and then divide by twelve. §273.11(a)(2) and (4). If the business has had a substantial change or if it has been operating less than one year, the agency shall use a system of anticipating income. §273.11(a)(1)(i) and (iv). See also the FS Handbook, §4.3.3.5.

The agency correctly determined petitioner's husband's monthly income using this system. Petitioner acknowledged that his employment circumstances have not changed since 2014; if anything his income has increased. Therefore the agency correctly determined that petitioner's husband had \$2,706.16 average monthly self-employment income.

The second issue is the deeming of income from household members who are ineligible for FS. If a member of the household is kept out of the FS group, his income can be deemed to the eligible FS member. FS Handbook, §4.7.3. If the household member is kept out due to non-qualifying immigration status, his income is pro-rated to the eligible member as follows: the earned monthly income is divided by the number of household members (in this case two); then the usual 20% earned income deduction is allowed, and the remainder is deemed to the eligible member. Handbook, §4.7.5.1. See 7 C.F.R. §273.11(c)(3), which gives the state the option on how to deem the ineligible household member's income.

Thus petitioner's husband's monthly income of \$2,706.16 is divided by two to leave \$1,353.08. 20% of that is subtracted for the earned income deduction, so \$1,353.08 times 20% equals \$270.62. \$1,353.08 minus \$270.62 equals \$1,082.46. That is the amount that is deemed to petitioner.

From the \$1,082.46 the agency deducts the \$155 standard deduction and the \$368.27 shelter deduction, leaving \$571.19 as net income to determine petitioner's FS. A person with \$571.19 net income is entitled to \$22 FS. Handbook, Appendix 8.1.2.

I conclude that the agency correctly determined petitioner's FS after her November, 2015 review.

CONCLUSIONS OF LAW

The agency correctly determined petitioner's FS after her November, 2015 review showed an increased in her husband's self-employment income.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 25th day of January, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 25, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability